November 02, 2017

Mr. Gilles Binda
Acting Director
Resource Policy and Programs
Natural Resources and Environment Branch
Northern Affairs Organization
Indigenous and Northern Affairs Canada
15 Eddy Street, Room 10F07
Gatineau QC K1A 0H4

Via Email Gilles.Binda@aadnc-aandc.gc.ca

Dear Mr. Binda:

Proposed Amendments to the *Mackenzie Valley Resource Management Act*, Mackenzie Valley Land Use Regulations, and Mackenzie Valley Federal Areas Waters Regulations

Further to our letter of May 15, 2017 and as committed to on June 29, 2017 during our meeting regarding the Draft Legislative Proposal on amendments to the *Mackenzie Valley Resource Management Act* (MVRMA), attached are recommended changes to the MVRMA, Mackenzie Valley Land Use Regulations, and the Mackenzie Valley Federal Areas Waters Regulations.

Our recommendations stem from many years of operational experience, and we believe they will assist in the government's overall objectives to clarify and ensure the maximum effectiveness of the northern regulatory system.

The Land and Water Boards also encourage the federal and territorial governments to work together to make sure legislative amendments are drafted in a coordinated manner to ensure consistency, particularly for projects that are located on split interest areas.

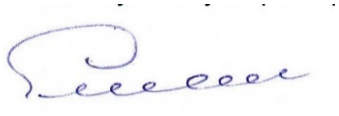
Should you have any questions about our recommendations, please contact Angela Plautz at (867) 766-7461 or aplautz@mvlwb.com.

Yours sincerely,

Mavis Cli-Michaud
Chair
Mackenzie Valley Land and Water Board

Violet Camsell-Blondin
Chair
Wek'èezhìi Land and Water Board

Paul Sullivan
Chair
Gwich'in Land and Water Board



Larry Wallace
Chair
Sahtu Land and Water Board

Copied to:

Joe Dragon, Deputy Minister, Department of Environment and Natural Resources, GNWT
Willard Hagen, Deputy Minister, Department of Lands, GNWT

Attachments:

- Table 1. Recommended Amendments to the *Mackenzie Valley Resource Management Act* (MVRMA)
- Table 2. Recommended Amendments to the Mackenzie Valley Land Use Regulations
- Table 3. Recommended Amendments to the Mackenzie Valley Federal Areas Waters Regulations

Table 1. Recommended Amendments to the *Mackenzie Valley Resource Management Act* (MVRMA) – As of October 31, 2017

Recommended Amendment #	***Sub-heading***	**Section**	**Subsection**	**Paragraph**	**Subparagraph**	**Comments**	**Suggested change/modifications to the Act**
1	Interpretation Definitions local government means any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community, settlement or government of a Tlicho community, whether incorporated or not, and includes the territorial government in the case where it is acting in the place of that local government in accordance with those laws. It also includes the Déline Got'ine Government in the case where it is exercising the jurisdiction and authority set out in 9.1 of the Déline Agreement.					There has been confusion about the regulation of land use on reserves that are located outside of local government boundaries. For example, the Kátł'odeeche First Nation (KFN) Reserve is located outside of the Hay River local government boundary. In an email from an INAC official, it was stated that, "We have confirmed that the Reserve is outside of the local Government boundary or doesn't fall under the definition of local government as that definition specifically notes local government as per GNWT legislation, which a Reserve is not. Therefore the MVRMA is applicable." This interpretation means that the KFN Reserve is subject to all land use permitting triggers under sections 4 and 5 of the MVLUR, which includes the construction of a building with a footprint of more than 100 m^2 and a height of more than 5 m.	It is recommended that INAC consider clarifying the definition of local government so that it includes reserves that fall under the *Indian Act*, or clarify whether reserves that are located outside of local government boundaries should be subject to all land use permitting triggers, instead of just triggers that apply to areas outside of local government boundaries.
2	Term of office	14	(1) A member of a board holds office for a term of three years.			Consideration should be given to increasing the term of appointments. Three years is barely enough time for a new Board member to become comfortable with the processes and issues. For example, NEB appointments are for seven years. On page 3-18 of the 2010 NWT Environmental Audit, it states, "In	The Boards recommend that section 14 be amended to increase the term of appointment to five years.

						responding to the 2005 NWT Audit, INAC disagreed with these extensions, but evidence provided suggests that the case for extension of term appointments has validity…"	
3	Local government Agreement	53	(1) This Part does not apply in respect of the use of land within the boundaries of a local government to the extent that the local government regulates that use. (2) The board established for a settlement area and the territorial Minister shall, in consultation with each local government, jointly determine the extent to which the local government regulates the use of land within its boundaries for the purposes of subsection (1).			Because sections 53 and 98 have been interpreted differently, it should be made clear who is responsible for regulating land use until a determination is made. Currently, the LWBs will process a land use permit application in the absence of a determination.	The LWBs recommend that sections 53 and 98 be amended to clarify who regulates the use of land until a determination is made.
4	Acting after expiry of term*	57.3*				As the Boards proposed on October 18, 2013 and May 15, 2017, this approach creates uncertainty. If the member is necessary for quorum, the result of the Minister's decision not to approve would be that the proceeding would have to be started over. In light of that, the approach set out in this section creates a seemingly unnecessary administrative burden for the Boards.	The LWBs suggest that this section should be re-written. It should simply say that the term of a board member necessary for quorum in a proceeding is extended, for that proceeding only, until a decision is made. There are examples of statutes creating administrative tribunals where such a member's extension is automatic. This comment applies to section 105*.
5	Jurisdiction - Land	59	(1) A board has jurisdiction in respect of all uses of land in its management area for which a permit is required under this Part and may, in accordance with the			Terminology and regulatory processes for increasing the terms of water licences and land use permits are different in the MVRMA, Mackenzie Valley Land Use Regulations (MVLUR), and the *Waters Act*. For example, land use	Terminology and regulatory processes for amendments and increasing the term of a land use permit and a water licence need to be clarified and harmonized as much as possible.

			regulations, issue, amend, renew, suspend and cancel permits and authorizations for the use of land, and approve the assignment of permits.			permits can be renewed according to the MVRMA, but renewals are not mentioned in the MVLUR. The MVLUR only provide for an extension, which is requested by the Permittee. If approved by a Board, the term can be extended for an additional period not exceeding two years. Because renewals are provided for in the MVRMA, but not the MVLUR, the Boards have interpreted that a land use permit can be renewed. A renewal is a new application for a development that has already been permitted and/or licensed. It can be issued for a period of up to five years and extended up to a maximum of two years as with any other land use permit application. On the other hand, the term for a water licence can be "extended" through an amendment to term or a renewal. (However, the difference between an amendment to term and a renewal needs to be clarified. The possibility of an amendment to term is noted under paragraph 72.15(2)(b) of the MVRMA.) Extensions are not available for water licences. Also, the LWBs can amend water licences on their own motion where the amendment appears to the Board to be in the public interest. However, this isn't the same for land use permits - amendments to land use permits can only be initiated by a request from the Permittee (or possible via an assignment process). Terminology and processes need to be clarified and harmonized, as they have created confusion.	Also, the difference between an amendment to term and a renewal of a water licence needs to be clarified. The Boards recommend that an amendment to term should be similar to an extension to a land use permit – up to a two-year extension without a change to conditions. In this case, a public hearing shouldn't be a mandatory requirement.
6	Jurisdiction – water and waste outside federal area	60	(1.1) A board has jurisdiction in respect of all uses of waters	(e) require an applicant for a licence, a licensee or a		For land use permits (see subsection 38(1) of the MVLUR), the Boards may change security	The legislation needs to clarify: 1) if the LWBs can change security for an assignment of a water

			and deposits of waste on lands outside a federal area in its management area for which a licence is required under any territorial law and may, in accordance with that law,	prospective assignee of a licence to furnish and maintain security; and		for assignments. It is not clear if the Boards can do this for water licences. Further, if the Boards are able to change security, it is difficult for prospective assignees to post security if the security amount might change during Board deliberations.	licence; and, 2) if so, when security should be posted for an assignment. Ideally the LWBs could approve an assignment on the condition security will be posted (see subsection 71(1) of the MVRMA for land use permits). Consequently, the assignment would not be effective until the Board has received confirmation from the Minister that security has been posted.
7	Public Register	68	(1) The Board shall maintain at its main office, in any form that is prescribed by the regulations, a register convenient for use by the public in which shall be entered, for each application received and each licence or permit issued, the information prescribed by the regulations.			The LWBs maintain a public registry at their respective offices and online. This provision should be updated to reflect current technology. It is noted that the MVRMA was amended so that the Review Board's registry is available online.	The LWBs recommend that this provision be updated to clarify that the Boards can also maintain an online registry, so both options for the registry are available.
8	Register to be open to inspection	68	(2) The register shall be open to inspection by any person during the Board's normal business hours, subject to the payment of any fee prescribed by the regulations.			Any fees on accessing copies to the registry can limit some members of the public from access to public registry materials. The Boards' practice is not to collect fees.	Removal of "on payment of a fee" should be removed. This recommendation should also be applied to subsection 68(3).
9	Posting security	71	(1) A board may require, as a condition of a permit or as a condition of the assignment of a permit, the posting of security with the federal Minister in a form prescribed by the regulations or a form satisfactory to the federal Minister and in an amount specified in,			Subsection 38(3) of the MVLUR states that the, "Board shall not authorize an assignment of a permit until any required security has been posted by the assignee in accordance with subsection 32(4)." This seems to contradict subsection 71(1), where the Board may require "as a condition of the assignment of a permit, the posting of security." Operationally, it could be difficult for a prospective assignee to post	It is recommended that the LWBs could approve an assignment on the condition security will be posted. Therefore, the assignment would not be effective until the Board has received confirmation from the Minister that security has been posted. This meets the intent of subsection 71(1) of the MVRMA.

			or determined in accordance with, the regulations.			security prior to the authorization of the assignment because the Board might change the amount of security during Board deliberations as per subsection 38(1) of the MVLUR.	
10	Term	72.03	(2) A licence issued under subsection (1) may be issued for a term	(a) of not more than 25 years, in the case of a type A licence that is in respect of a class of undertakings prescribed by the regulations or a type B licence; or		The Boards rely on the evidence submitted during a proceeding to determine the term of a licence on a case by case basis. This comment also applies to paragraph 72.12(1)(a).	At this time, the Boards do not have a recommendation about which type A licences should be on the prescribed list.
11	Factors in determining compensation	72.03	(6) In determining the compensation that is appropriate for the purpose of paragraph (5)(b), the board shall consider all relevant factors, including	(c) the extent and duration of the adverse effect, including the incremental adverse effect; c) de l'importance et de la durée des effets négatifs, y compris les effets négatifs cumulatifs;		The English and French versions of paragraph (c) could be interpreted differently. "Incremental" and "cumulatifs" could have different meanings. This needs to be clarified, as this difference could impact the determination of compensation.	The English and French versions of paragraph (c) need to be made the same.
12	Security – federal area	72.11	(1) A board may require an applicant for a licence that is to apply with respect to a federal area, a holder of such a licence or a prospective assignee of such a licence to furnish and maintain security with the federal Minister, in an amount specified in, or determined in accordance with, the regulations made under paragraph 90.3(1)(g) and in a form prescribed by those regulations or a form satisfactory to the federal Minister.			For land use permits (see subsection 38(1) of the MVLUR), the Boards may change security for assignments. It is not clear if the Boards can do this for water licences. Further, if the Boards are able to change security, it is difficult for prospective assignees to post security if the security amount might change during Board deliberations.	The legislation needs to clarify: 1) if the LWBs can change security for an assignment of a water licence; and, 2) if so, when security should be posted for an assignment. Ideally the LWBs could approve an assignment on the condition security will be posted (see subsection 71(1) of the MVRMA for land use permits). Consequently, the assignment would not be effective until the Board has received confirmation from the Minister that security has been posted.
13	How security might be applied	72.11	(2) The security may be applied by the federal	(a) if the federal Minister is satisfied that a person who is		The Mackenzie Valley Federal Areas Waters Regulations (section 12) do not include compensation	The Regulations may need to include compensation as a factor

			Minister in the following manner:	entitled to be compensated by a licensee under section 72.27 has taken all reasonable measures to recover compensation from the licensee and has been unsuccessful in that recovery, the security may be applied to compensate that person, either fully or partially; and		as a factor to consider when calculating security. Reductions in security held to compensate other water users could affect the funding available for closure and reclamation. Operationally, one way to incorporate it would be to add it as a contingency factor to the security model.	for the LWBs to consider when determining security.
14	Refund of security	72.11	(5) Any portion of the security that, in the federal Minister's opinion, will not be required under subsection (2) shall be refunded without delay to the licensee or assignor, as the case may be, if the federal Minister is satisfied that	(a) the appurtenant undertaking has been permanently closed or permanently abandoned; or		There is a significant amount of uncertainty around the final security refund, when and how a licence would be closed, and liability relinquishment. This uncertainty should be addressed as soon as possible.	The Boards would like to collaborate with the federal and territorial governments (e.g. establish a working group) on this issue, and until more work is done, it is difficult to propose specific legislative changes on this topic. However, legislative amendments related to closure and reclamation and security should be consistent with the 2002 Mine Site Reclamation Policy for the NWT, and subsequent updates.
15	Renewal, amendment and cancellation	72.12	(1) Subject to subsections (2) and (3), a board may, in respect of a federal area,	(a) renew a licence, if the licensee applies for its renewal or if the renewal appears to the board to be in the public interest, with or without changes to its conditions, for a term… (b) amend, for a specified term or otherwise, any condition of a licence		The difference between a renewal without changes to conditions and an amendment to term is not clear. (The possibility of an amendment to term is noted under paragraph 72.15(2)(b) of the MVRMA.)	The Boards recommend that an amendment to term be like an extension to a land use permit – up to a two-year extension without any changes to conditions. In this case, a public hearing shouldn't be a mandatory requirement. So, for example, if a water licence for a mine was about to expire, operations were to remain the same, and there was only a year of mine life left, the company could apply for an amendment to term to "extend" the water licence for that relatively short period of time.
16	Application to cancel licence	72.12	(3) An application to cancel a licence shall be in the form and contain the information that is,	(a) if the licence applies with respect to a federal area,		An application to cancel a licence should be included in the regulations.	The LWBs recommend that an application to cancel a licence be developed and included in the regulations.

				prescribed by the regulations; and (b) if the licence applies with respect to lands outside a federal area, required under any territorial law.			
17	Approval to issue, renew, amend or cancel	72.13 A board may issue, renew, amend or cancel — in respect of a federal area or lands outside a federal area — a type A licence, or a type B licence in connection with which a public hearing is held by the board with respect to its issuance, renewal, amendment or cancellation, only with the approval of the federal Minister.				Prior to the amendments to the MVRMA on April 1, 2014, the Boards were able to approve type B water licences in connection with a hearing without the Minister's approval. The Boards request that this power be re-instated, as it may be perceived as a step backward.	The LWBs recommend that this power be re-instated to protect the spirit and intent of the land claims.
18	Authorization of assignment	72.14	(2) A board shall authorize the assignment of a licence if it is satisfied that neither the sale or other disposition of any right, title or interest of the licensee in the appurtenant undertaking at the time, in the manner and on the terms and conditions agreed to by the licensee, nor the operation of the appurtenant undertaking by the prospective assignee			The requirement of an application for the assignment needs to be included in this provision. Currently, it is not clear what the assignee and assignor need to do according to this provision. The requirements for the assignment of a land use permit are clearer (see subsection 38(2) of the MVLUR). The assignment requirements for licences and permits should be harmonized as much as possible.	The LWBs recommend that this subsection be amended so it is clear what the assignor and prospective assignee need to do to for the assignment process (e.g. fill out an application form). It should be amended to ensure that it is congruent with the assignment process for land use permits.

			would be likely to result in a contravention of, or failure to comply with, any condition of the licence or any provision of this Act or the regulations.				
19	Public Hearings and Procedure - Exception	72.15	(3) Subsection (2) does not apply	(a) if, after giving notice of a public hearing under section 72.16, the board receives no notification on or before the 10th day before the day of the proposed hearing that any person or body intends to appear and make representations and the applicant or the licensee, as the case may be, consents in writing to the disposition of the matter without a public hearing;		Ten days can present logistical issues. Most venues and airlines require more notice than 10 days' cancellation notice, so the cancellation of a hearing can become costly. Further, more notice will help parties make alternate arrangements.	The LWBs recommend a 20-day time period, rather than a 10-day time period to reduce costs and to schedule the remainder of the process.
20	Decision of Minister and reasons	72.18	(3) The federal Minister shall, within 45 days after the board's decision is referred to him or her, notify the board whether or not the decision is approved and, if it is not approved, provide written reasons in the notification.			If the Minister does not approve the Board's decision, it is not clear what the timelines are for the Board to address the matter. If timelines are going to be implemented, the Boards recommend that a period of nine months be considered. The nine-month time limit should re-start after the day the Minister notifies the Board of the decision and would not include the time it takes for the proponent to provide information or studies.	If the Minister does not approve the Board's decision, the Boards recommend that a new timeline of at least nine months be considered for the Boards to address the Minister's decision.
21	Absence of decision	72.18	(5) If the federal Minister does not notify the Board whether or not the decision is approved within the time limit referred to in			This provision might help streamline the approval process; however, it may become an issue if there are any technological or mailing issues (e.g. a decision to not approve a licence is lost in	This provision should be amended, so that is it similar to subsection 72.18(3).

			subsection (3) or (4), whichever is applicable, the federal Minister is deemed to have given approval.			cyberspace or the mail, and it was then assumed that the licence was approved). Further, the Minister's signature is still required for the approval process, so it is still important that the Minister provides notification of his or her approval.	
22	Extension of time limit by federal Minister	72.24	(1) The federal Minister may, at the request of the board, extend the time limit referred to in subsection 72.18(1), section 72.19 or 72.2 by a maximum of two months to take into account circumstances that are specific to the issuance, renewal or amendment of the licence.			This subsection refers to subsection 72.18(1), section 72.19 or 72.2, which all apply to lands outside of a federal area. The *Waters Act* has a similar provision (i.e. section 52). Therefore, it is not clear which Minister the Board should contact about an extension for water licence applications in respect of lands outside of a federal area. Further, section 72.2, which applies to licences other than type A or B licences, only applies to applications outside of a federal area, so it is not clear why the federal Minister is involved (although "other type B licences" are not included in the *Waters Act*), so there appears to be a gap in the *Waters Act.*	It should be clarified which Minister – the federal or territorial Minister - should grant a time limit extension for water licence applications in respect of lands outside of federal areas. In the meantime, the Boards will ask the territorial Minister for extensions relating to water licence applications in respect of lands outside of federal areas. For water licence applications in respect of lands within federal areas, the Boards will ask the federal Minister for any extensions.
23	Review by board	88	(1) A board shall, if so requested by a person who is subject to an order made by an inspector under subsection 86(1) or (2) or section 86.1, review that order without delay and confirm, vary or revoke it.			As with the proposed Administrative Monetary Penalties (section 5.1), the Boards believe that it is more legally appropriate that the Minister be the review body. The (territorial) Minister is the review body for Inspector's directions involving water licences outside of federal areas.	The Boards recommend that the Minister should be the review body.
24	Principal offences – water use and waste deposit	92.01				Fine amounts seem insufficient for large infractions, particularly for type A licences (e.g. large mines or oil and gas development).	Fine amounts need to be re-evaluated.
25	Posting of security	94 Notwithstanding section 7, Her				Local governments should also be included.	The LWBs recommend that section 94 be amended to include local governments.

		Majesty in right of Canada and, for greater certainty, the territorial government shall not be required to post security pursuant to section 71.					
26	Local government jurisdiction Agreement	98	(1) This Part does not apply in respect of the use of land within the boundaries of a local government to the extent that the local government regulates that use. (2) The Board and the territorial Minister shall, in consultation with each local government, jointly determine the extent to which the local government regulates the use of land within its boundaries for the purposes of subsection (1).			Because sections 53 and 98 have been interpreted differently, it should be made clear who is responsible for regulating land use until a determination is made. Currently, the LWBs will process a land use permit application in the absence of a determination. See comments for section 53.	The LWBs recommend that sections 53 and 98 be amended to clarify who regulates the use of land until a determination is made. See comments for section 53. The sub-heading should also be the same for both provisions – one is local government and the other is local government jurisdiction.
27	Delay, Boards established under Part 3 or 4, Computation of time*	125*	(1.1), (1.2), (1.3), (3), (4), and (5)*			Further to the Boards' submission of October 18, 2013, the Boards appreciate that proposed subsection 125(1.2) clarifies that only one Board meeting and not two are required. However, from operational experience, the Boards are concerned about the pause period (as stated in the Boards' submission of May 15, 2017). The Boards understand the intent behind the pause period; however, it may create pressure on the Boards to shorten important review and response	To help address this issue, the Boards recommend that the nine-month timeline for processing water licences re-starts after the completion of an EA or EIR. The Boards would be pleased to discuss the 10-day pause period further.

						deadlines, particularly for projects that are time sensitive (e.g. activities that rely on winter roads). This pressure will increase if more than one body conducts a screening, as the pause period is based on when the last screener submits their report of determination to the Review Board. It will be important for Proponents, including governments and First Nations, to understand that they will need to submit their applications further in advance to account for the pause period. Further, as highlighted in the Boards' submission of October 18, 2013, "The Board notes that if a project is in process, i.e., was not referred to EA/EIR by the Board, and is subsequently referred by a referral authority other than the Board, a chunk of the nine-month review period may be used prior to an EA referral and that time is then not available to the Board for the licensing process post EA/EIR decision."	
28	Environmental Assessment	126	(1) The Review Board shall conduct an environmental assessment of a proposal for a development that is referred to the Review Board following a preliminary screening pursuant to section 125.			A section needs to be added which allows for the regulatory process to bypass the preliminary screening for major projects that are certain to require an environmental assessment or review. Currently applicants are required to a submit a "complete" application to the LWBs prior to a preliminary screening being conducted or by being referred under subsections 126(2) or (3). Applicants may spend more time and money completing an application at this phase of the regulatory process, which may be amended significantly once in the	It is recommended that the legislation be amended so that major projects could be referred directly to environmental assessment without the requirement of a submission of an application to the LWBs and without a preliminary screening. It is recommended that further discussion is required to develop this process (e.g. new regulations could be established to designate activities and/or thresholds that require mandatory environmental assessment).

						environmental assessment (EA) or environmental impact review (EIR) process. There is also undue stress on regulators and reviewers who need to review applications at this phase of the process, which can possibly be bypassed. Also, this would allow the Boards' nine-month timeline to start after the EA is completed. Currently, at least a month is spent leading up to the EA process, so the Boards are left with less time after the EA to process an application that might have changed significantly.	
29	Delay	129 Where the Review Board makes a determination under paragraph 128(1)(a),		(a) a regulatory authority, a designated regulatory agency or the Tlicho Government shall not issue a licence, permit or other authorization for the development, and (b) where no licence, permit or authorization is required under any federal, territorial or Tlicho law for the development, the person or body that proposes to carry it out shall not proceed, before the expiration of ten days after receiving the report of the Review Board.		According to subsection 72.22(2), "If the proposed use of waters or deposit of waste to which the application or the licence relates is part of a proposed development in respect of which an environmental assessment, an environmental impact review or an examination of impacts on the environment that stands in lieu of an environmental impact review is conducted under Part 5, then the period that is taken to complete that assessment, review or examination is not included in the calculation of the time limit under subsection 72.18(1), section 72.19 or 72.2 or of its extension." Because the time limit does not include the period it takes to complete an assessment, review or examination, it is important that the MVRMA is clear when these are completed. Section 129 should be more explicit about when the assessment has been completed where the Review Board makes a determination under paragraph 128(1)(a). Currently, it is assumed that the assessment is complete ten days after the report is received, unless	It is recommended that section 129 clarify when the environmental assessment has been completed where the Review Board makes a determination under paragraph 128(1)(a). This will clarify when the Board's timeline starts again.

						the Minister communicates otherwise.	
30	Distribution of decision (for Report of Environmental Assessment)	130	(4) The federal Minister shall distribute a decision made under this section to the Review Board and to every first nation, local government, regulatory authority and department and agency of the federal or territorial government affected by the decision.			The distribution of this decision needs to be made in a timely and orderly fashion. In some cases, the decision has been sent out at different times.	The LWBs recommend that this subsection be amended so that the decision is distributed in a timely and expeditious manner to all parties. This recommendation also applies to section 136.
31	Transboundary effects	140	(1) Where it appears to the Review Board, during the environmental assessment of a development proposed to be carried out wholly within the Mackenzie Valley, that the development might have a significant adverse impact on the environment in a region outside the Mackenzie Valley, the Review Board shall so advise the authority responsible for the examination of environmental effects in that region and request its cooperation in the conduct of the assessment.			A similar provision should be included for preliminary screenings conducted by the Boards for proposed developments that are transboundary (outside of the Mackenzie Valley).	The LWBs recommend that a similar provision be included for preliminary screenings conducted by the Boards for proposed developments that are transboundary (i.e. that may have impacts beyond the Mackenzie Valley).
32	Duty – regulatory authorities*	142.22*				The Boards will need to work with the Review Board, INAC, and the GNWT about how best to implement amended certificates under new section 142.22, which may require consequential amendments to other pieces of legislation. For example, currently the Boards cannot amend land	In order to implement amended certificates, the LWBs recommend that the MVLUR be amended so that the LWBs can amend land use permits on their own motion.

						use permits on their own motion, unless it involves an assignment. Depending on the type of certificate amendment, the Boards might be able to develop permit conditions that can accommodate changes (e.g. an update to a management plan might be triggered when a certificate is amended). However, amending the MVLUR might be necessary to allow the Boards to amend permits on their own motion if a condition needs to be added or changed completely. Conversely, the Boards can amend water licences on their own motion based on the public interest. However, depending on the nature of the amended condition, it is possible that a public hearing might be required.	
33	Administrative Monetary Penalties (AMPs)*	Part 5.1*				As the Boards stated in two previous submissions, dated October 18, 2013 and May 15, 2017, in response to MVRMA amendments, the Boards believe that the Minister should be the review body. The purpose of the AMPs is to correct non-compliances. AMPs are not meant to be punitive and should not be subject to a trial in the same way a prosecution would. If the review is to the Board, with a hearing, submission of evidence, witnesses and subpoenas, it is very likely that these reviews will turn into a trial format. A request for review to the Minister would be less likely to resemble a trial and would better reflect a negotiation over whether there was an offence or whether the fine amount should be altered.	The LWBs recommend that the Minister should be the review body. The Boards would welcome any further discussions related to the review body process. The LWBs encourage the GNWT and INAC to work together to ensure the AMPs Regulations are similar to ensure consistency.

						Further, if an AMPee is issued an AMP for a Part 3 violation and another for a Part 5 violation and requests that both be reviewed, the relevant Board and the Minister will need to ensure a consistent review process. If the Minister was the review body for both types of violations (Part 3 and Part 5), this would simplify the review process. If the Boards become review bodies, the Boards will need additional resources to carry out these reviews.	
	Other:						
34	Eligibility Requirements (for water licences)					There is an eligibility requirement for land use permits (section 18 of the MVLUR); however, there isn't one for water licences. In most cases, activities that trigger a water licence also require a land use permit, so eligibility is dealt with through the permitting process. However, there are some cases, particularly within local government boundaries where a water licence is triggered but a land use permit is not (because of different land use triggers within a local government boundary). If someone wants to build a permanent dock, which may involve a bank alteration, there should be an eligibility requirement to show that the applicant has the right to conduct this work.	The LWBs recommend that eligibility requirements be clarified for undertakings, particularly if there is no related land use permit.
35	Name Changes					In some cases, companies do not update the Boards about when the name of their company has changed. It is important for the Boards to have this information to ensure authorizations are updated.	It is recommended that the legislation is clear about name change requirements.

36	Exemption from Part 5 Determination Process					When an RA or DRA determines that a proposed development is exempt from Part 5 prior to issuing an authorization (because the development falls under the Exemption List Regulations, section 157.1 of the MVRMA, it is deemed to be an emergency, etc.), it is not clear what the process is if another RA, DRA, or the Review Board disagrees with this determination.	The legislation should be clear about what the process is when an RA, DRA, or the Review Board disagrees with a "Part 5 exemption determination". In other words, the authority of the RA, DRA, or the Review Board needs to be clarified in relation to such a determination.

Table 2. Recommended Amendments to the Mackenzie Valley Land Use Regulations (MVLUR) – As of October 31, 2017

Recommended Amendment #	***Sub-heading***	**Section**	**Subsection**	**Paragraph**	**Subparagraph**	**Comments**	**Suggested change/modifications to the Act**
1	Interpretation	***road*** means		(b) a place, bridge or other structure that the public is ordinarily entitled or permitted to use for the passage of vehicles during any part of the year; or		This definition has created confusion, as "ordinarily entitled or permitted" has been defined differently, depending on the type of vehicle that is used (e.g. ATV vs a car vs a 4X4 truck). Clarity is important, as this definition is linked to land use permit triggers (see subparagraphs 4(a)(ii) and 5(a)(ii)). Currently, the Boards ask the Inspectors for their opinion of the condition of the road to help define whether it is a road under (b).	This provision should be amended to clarify what "ordinarily entitled or permitted" means.
2	Interpretation	***watercourse*** means a natural body of flowing or standing water or an area occupied by water during part of the year, and includes streams, springs, swamps and gulches but does not include groundwater.				It is not clear why the definition of watercourse in the MVLUR is different compared to the definition of watercourse in the Mackenzie Valley Federal Areas Waters Regulations, which state, "watercourse means a natural watercourse, body of water or water supply, whether usually containing water or not, and includes groundwater, springs, swamps and gulches".	The definition of watercourse should be amended to include groundwater; to be in alignment with the MVFAWR.
3	Prohibitions	4 No person shall, without a Type A permit, carry on any activity that involves		(b) on land within or outside the boundaries of a local government,	(i) the use of motorized earth-drilling machinery the operating weight of which, excluding the weight of drill rods, stems, bits, pumps and other ancillary equipment, equals or exceeds 2.5 t, for a purpose other than the drilling of holes for building piles or utility poles or the setting of explosives within the	Within local government boundaries, a permit isn't required for the drilling of holes for building piles, utility poles, or the setting of explosives. However, the Boards do receive applications for the drilling of holes for the installation of groundwater monitoring wells and geotechnical work within local government boundaries, which do require permits. These activities have similar environmental impacts compared to the exemptions (and in some cases less so).	The Boards recommend that the drilling of holes for the installation of groundwater monitoring wells should be added as an exemption, along with the drilling of holes for building piles or utility poles or the setting of explosives. All other drilling activities (e.g. mining and oil and gas activities) within local government boundaries should trigger a land use permit. This recommendation also applies to paragraph 5(b)(i).

					boundaries of the local government,		
4					(iv) the use of a stationary motorized machine, other than a power saw, for hydraulic prospecting, moving earth or clearing land.	It is not clear what is a stationary motorized machine for hydraulic prospecting, moving earth or clearing land.	This provision should include examples of what is a stationary motorized machine.
5	Prohibitions	4 and 5				All of the triggers for a land use permit should be reviewed to ensure they reflect current practices and are clear (e.g. could the storage of empty, used fuel tanks considered to be the use of a single container for the storage of petroleum fuel?)	All of the prohibitions under sections 4 and 5 should be reviewed to ensure they are clear and appropriate thresholds.
6	Excavation	8 Unless otherwise authorized by a permit or in writing by an inspector, every permittee shall replace all materials removed by the permittee in the course of excavating, other than rock trenching, and shall level and compact the area of the excavation.				Because section 8 exempts rock trenching, it should be defined. For example, it is not clear if large or small rock trenches are exempt from being levelled and compacted. Further, section 15 of the MVLUR states, “Unless otherwise authorized by a permit, after completing a land-use operation, a permittee shall restore the permit area to substantially the same condition as it was prior to the commencement of the operation.” This seems to contradict section 8, where a rock trench doesn’t need to be levelled and compacted. Further, a restoration plan is required for all activities (section 8 of Schedule 2), so any plans to reclaim a rock trench could be outlined in the plan. Therefore, this exemption could be removed to allow flexibility of closure options.	It is recommended that rock trenching be removed as an exemption. The reclamation of the rock trench can be outlined in the required reclamation plan.
7	Emergencies	17	(2) A person who carries out a land-use operation under subsection (1) shall immediately thereafter send a written report to the Board describing the duration, nature and extent of the operation			The written report should also be send to the Inspector. Further, the Inspector should be notified as soon as possible about the emergency.	This subsection should be amended to include the Inspector. Further, the Inspector should be notified as soon as possible about the emergency in case they need to give direction.

8	Eligibility for a Permit	18 A person is eligible for a permit who		(a) where the proposed land-use operation is in the exercise of a right to search for, win or exploit minerals or natural resources, (b) in any other case, has a right to occupy the land and either contracts to have the land-use operation carried out or is the person who is to carry out the operation.	(i) holds the right, (ii) is the manager of operations, where the right is held by two or more persons who have entered into an exploration or operating agreement designating one of them as the manager of operations, or (iii) is the person who contracts to have the land-use operation carried out, where the right is held by two or more persons who have not entered into an exploration or operating agreement designating one of them as manager of operations; or	Eligibility is an important component of the land use permitting process; however, the wording of this provision has created confusion about how eligibility can be met in certain circumstances. For example, if a person wanted to build a road (under paragraph 18(b)), it is not clear what evidence they need to submit with their application form to prove they meet eligibility requirements.	The LWBs recommend that this provision be amended to clarify eligibility requirements, particularly for activities that fall under paragraph 18(b).
9	Conditions of Permits	26	(2) Subject to subsections (4) and (5), the Board may amend any of the conditions of a permit on receipt of a written request from the permittee setting out	(b) the nature of the proposed amendment; and		Because a preliminary screening might need to be conducted for an amendment request as per the Preliminary Screening Requirement Regulations, the following should be added to this paragraph: “including a summary of the potential environmental and resource impacts and mitigation measures”.	Paragraph 26(2)(b) should be amended to add, “, including a summary of the potential environmental and resource impacts and mitigation measures.”
10			(3) Where the Board receives a request from a permittee pursuant to subsection (2), it shall notify the permittee of its decision, and of the reasons therefor, within 10 days after receipt of the request.			Ten days is insufficient to process amendments. More time is required to complete public consultation and a preliminary screening. Further, as with water licences, the LWBs should be able to amend permits based on their own motion if the amendment appears to be in the public interest. This power will be even more important when	The LWBs recommend this subsection be amended to: • increase the timeframe from 10 days to 42 days to complete pubic consultation and to conduct a preliminary screening in order to meet Part 5 of the MVRMA;

						Development Certificates come into effect and need to be amended.	• clarify that the timelines do not start until the request is deemed complete; and, • allow the LWBs to amend a permit based on their own motion if the amendment appears to be in the public interest.
11	Conditions of Permits	26	(5) Subject to subsection (6), every permit shall set out the term for which it is valid, which term shall be based on the estimated dates of commencement and completion set out by the permittee in the permit application, but the term of a permit shall not exceed five years.			The term should not only be based on dates provided by the Permittee, but the LWBs should also have discretion to set dates.	Change wording to read: "…be based on the estimated dates of commencement and completion set out by the permittee in the permit application, or for a term set by the Board, but the term of a permit shall not exceed five years".
12	Final Plan	29	(4) The Board shall reject any final plan that is not in compliance with this section and section 30.			Subsection 4 states that the Boards must reject a final plan submitted after 60 days, even if it has met all the information requirements. The Boards suggest that subsection 1 be amended, so it only refers to the timeline requirements and a new subsection be created that refers to the information requirements to be submitted within the final plan. Subsection 4 should be amended to reference non-compliance of the subsection referring to the information requirements only and not to the timelines.	The Boards recommend that subsection 29(1) be amended to separate the timeline requirements from the information requirements. The Boards agree with the timelines as currently required; however, the Boards should have the discretion to accept late plans because many final plans are submitted late. Currently, according to the MVLUR, the Boards can't accept final plans that are late. This puts the Boards in an awkward position because if final plans are late, final clearances shouldn't be granted. This would require an amendment to subsection 29(3).
13	Posting of Security	32	(1) The Board may require security to be posted in an amount not exceeding the aggregate of the costs of	(a) abandonment of the land-use operation;		Use the currently accepted term of "closure" rather than "abandonment".	Change "abandonment" to "closure".
14				(b) restoration of the site of the land-use operation; and			Change "restoration" to "reclamation".
15				(c) any measures that may be necessary after the abandonment of the land-use operation.		Use the currently accepted term of "closure" rather than "abandonment".	Change "abandonment" to "closure".

16	Assignment	38	(1) On receipt of an application in writing for approval of an assignment of a permit, the Board may approve the assignment with all of the original conditions or with amended conditions. (2) An application for approval of an assignment of a permit shall be forwarded to the Board at least 10 days prior to the proposed effective date of the assignment and shall include			The timeline in subsection 38(2) needs to be reconsidered for the following reasons: • If the Boards can amend a permit with the assignment application as per subsection 38(1), then more time is required for this aspect of the assignment process. Currently, the Boards send out assignment applications for public review. Based on the comments received, the Board might amend the permit. Should the Board amend the permit during the assignment process, it is not clear if the amendment would trigger a screening under the Preliminary Screening Requirement Regulations (PSRR). The PSRR exempt assignments from preliminary screenings but do not exempt amendments. • The timeline should be in alignment with the assignment application process for water licences, which is 45 days.	The Boards recommend that the submission timeline for an assignment application be increased: • to accommodate the additional time required to amend the permit should the Board decide to do so; and, • to be in alignment with timelines set out for water licence assignment applications in the Waters Regulations and the Mackenzie Valley Federal Areas Waters Regulations.
17	Assignment	38	(3) The Board shall not authorize an assignment of a permit until any required security has been posted by the assignee in accordance with subsection 32(4).			This subsection seems to contradict subsection 71(1) of the MVRMA, where the Board may require “as a condition of the assignment of a permit, the posting of security.” Also, operationally, it might be difficult for a prospective assignee to post security prior to the authorization of the assignment because the Board might change the amount of security during Board deliberations as per subsection 38(1).	This subsection should be amended to clarify that the Board could approve an assignment based on the condition security will be posted. Therefore, the assignment would not be effective until the Board has received confirmation from the Minister that security has been posted. This meets the intent of subsection 71(1) of the MVRMA.
	Other:						
18	Name Changes					In some cases, companies do not update the Boards about when the name of their company has changed. It is important for the Boards to have	It is recommended that the legislation is clear about name change requirements.

						this information to ensure authorizations are updated.	

Table 3. Recommended Amendments to the Mackenzie Valley Federal Areas Waters Regulations (MVFAWR) – As of October 31, 2017

Recommended Amendment #	***Sub-heading***	**Section**	**Subsection**	**Paragraph**	**Subparagraph**	**Comments**	**Suggested change/modifications to the Act**
1	INTERPRETATION	2. "undertaking" means an undertaking in respect of which water is to be used or waste is to be deposited, of a type set out in Schedule B;				The definition of undertaking needs clarification with respect to how security is calculated and collected.	The definition of undertaking should be reviewed to clarify whether or not it includes the entire undertaking or just the water-related components of the undertaking.
2	INTERPRETATION	2. "undertaking" means an undertaking in respect of which water is to be used or waste is to be deposited, of a type set out in Schedule B;				Currently the MVFAWR refer to "undertaking", whereas the *Mackenzie Valley Resource Management Act* (MVRMA) refers to the "appurtenant undertaking", which means the work described in a licence. The terminology and definitions should be consistent.	The Boards recommend that the MVRMA and the MVFAWR have the same terminology and definitions (e.g. undertaking vs. appurtenant undertaking).
3	WATER USE OR WASTE DEPOSIT WITHOUT A LICENCE	5	(1) A person may use water and deposit waste without a licence if the proposed use or deposit	(c) satisfies the criteria set out	(i) in respect of an industrial undertaking, in column II of Schedule IV,	The Boards would be interested to hear if other parties have suggestions to update the Schedules.	Any amendments to the schedules of the territorial Waters Regulations and the MVFAWR should be done in alignment.
4	APPLICATIONS FOR LICENCES	6	(1) An application for a licence or for the amendment or renewal of a licence shall be the form set out in Schedule III and shall contain the information identified therein and be accompanied by a deposit equal to any water use fee that would be payable under subsection 9(1) in respect of the first year of the licence that is being applied for.			The Application Form currently limits the amount of information provided to the Board.	The Water Licence Application in Schedule III needs to be reviewed and revised. Sections should be added to allow the LWBs to require additional information for specific undertakings and to prompt applicants to provide information required under subsection 6(2).
5	APPLICATION FEES	7 The fee payable on the				The fee is minimal and administratively onerous on the	It is recommended that the fee be raised to a more appropriate value or removed.

		submission of an application for a licence or for an amendment, renewal, cancellation or assignment of a licence is $30.				LWBs and INAC. The application for land use permits is $150. Municipalities should be exempt from paying any application fees.	It is also recommended that municipalities be exempt from paying any application fees.
6	WATER USE FEES	9	(1) Subject to subsections (4) and (5), the fee payable by a licensee for the right to the use of water, calculated on an annual basis, is			Water use fee amounts are due for a review to reflect the current value of water. There has been confusion about whether water use fees should be paid for volumes less than threshold (e.g. 30m^3 per day) if the need for a water licence has been triggered by a deposit of waste.	The Boards recommend that the water use fee amounts be reviewed and updated. The Boards recommend that the Regulations clarify whether water use fees need to be paid for volumes less than threshold (if the trigger for the water licence was the deposit of waste).
7	WATER USE FEES	9	(5) No fees are payable under subsection (1) in respect of a diversion of water if the water is not otherwise used.			In 2014, the Boards sent a letter to ENR and INAC, requesting a joint response about clarifying water use fees with respect to a diversion of water. The Boards asked, "In your view, when would the drawdown of lakes or dewatering of underground workings trigger water use fees? In other words, please define, "if the water is not otherwise used." ENR responded by stating that this will be clarified via amendments to the legislation. The Boards did not receive a response from INAC.	The Boards recommend that water use fees with respect to the diversion of water need to be clarified.
8	APPLICATIONS FOR ASSIGNMENT	10	(1) The authorization of a board for the assignment of a licence referred to in section 72.14 of the Act may be obtained by submitting an application, accompanied by the fee set out in section 7, to the board established for the relevant water management area not less than 45 days before the date on which the applicant proposes to assign the licence.			The process for assigning land use permits and water licences should be similar (e.g. information required, timelines).	The LWBs recommend that this section be amended so that assignments for land use permits and water licences can be harmonized. The Boards agree with the 45-day timeline.

9	SECURITY	12	(1) A board may fix the amount of security required to be furnished by an applicant under subsection 72.11(1) of the Act in an amount not exceeding the aggregate of the costs of	(a) abandonment of the undertaking; (b) restoration of the site of the undertaking; and (c) any ongoing measures that may remain to be taken after the abandonment of the undertaking.		The MVFAWR do not include compensation as a factor to consider when calculating security. Reductions in security held to compensate other water users could affect the funding available for closure and reclamation (see paragraph 72.11(2)(a) of the MVRMA). Operationally, one way to incorporate it would be to add it as a contingency factor to the security model. The term "restoration" is outdated in the NT, where the term "closure and reclamation" has been in use for years. The security deposit should cover closure and reclamation of the site, and use of the word "restoration" here may cause confusion. Also, the security deposit should cover long-term monitoring and maintenance. It's not clear whether this is implicit in this section of the Regulations.	The MVFAWR may need to include compensation as a factor for the LWBs to consider when determining security. The Boards recommend replacing "restoration" with closure and reclamation" and consider whether "long-term care and maintenance" should also be added.
10	SECURITY	12	(2) In fixing an amount of security pursuant to subsection (1), a board may have regard to	(a) the ability of the applicant, licensee or prospective assignee to pay the costs referred to in that subsection; or		Costs for security should be consistently applied to all licensees. If a licensee is unable to pay for the security, they might not have the ability to do the operations applied for, including closure and reclamation.	This sub-section should be removed.
11	SCHEDULE II CLASSIFICATION OF UNDERTAKINGS	1. Industrial Undertaking				Currently mineral exploration is not included under industrial undertaking in Item 1 and does not fit the definitions under Item 2 for Mining and milling undertaking.	Mineral exploration should be classified under either "Industrial undertaking" or "Mining and milling undertaking".
12	SCHEDULES IV - VIII					The triggers for post-closure licences aren't clear. It is assumed that once the licensee can prove that there is no longer a direct or indirect deposit to surface water, a water licence is no longer required. The question is how long should a site be monitored to ensure this is the case? This is particularly	The legislation should clarify when water licences are no longer required, the "final clearance process" for water licences, and when security can be refunded completely to a licensee. The Boards would like to collaborate with the federal and

						challenging if acid generating waste rock might be an issue. The legislation should be clear about: • when a licence is no longer required; • the "final clearance" process; and, • when security can be refunded completely (particularly for large projects, such as mining).	territorial governments (e.g. establish a working group) on these issues, and until more work is done, it is difficult to propose specific legislative changes on this topic. However, legislative amendments related to closure and reclamation and security should be consistent with the 2002 Mine Site Reclamation Policy for the NWT, and subsequent updates.
	Other:						
13	Name Changes					In some cases, companies do not update the Boards about when the name of their company has changed. It is important for the Boards to have this information to ensure authorizations are updated.	It is recommended that the legislation is clear about name change requirements.